



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 07-0020

IN THE MATTER OF EDWARD CATALDO

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Edward Cataldo, pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 25, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Cataldo. The Commission concluded its inquiry and, on May 9, 2007, found reasonable cause to believe that Cataldo violated G.L. c. 268A, §§17(a), 19 and 23(b)(2).

The Commission and Cataldo now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. At all relevant times, Cataldo was the Leominster Building Department Director of Inspections.

2. Between July 2001 and 2002, Cataldo advertised his private business, Energy Plus, through a flier taped to the Building Department front counter. This flier was also distributed to permit applicants.

3. In his private business, Cataldo completed energy code audit reports. These energy code audits were required under the state energy code as part of the local building permit application process. Energy code audit reports are submitted along with building permit applications for new home construction or home additions and are reviewed by a building inspector prior to issuing a building permit.

4. Cataldo completed a number of energy code audit reports for properties located in Leominster as well as other locations. The energy code audit reports bear his company's name, Energy Plus. He was paid \$50 per report. When he completed the audit reports, he gave the reports back to the applicants.

5. In six instances applicants submitted the energy code audit reports completed by Cataldo to the Leominster building department along with building permit applications.

6. Those energy code audit reports were then reviewed by a building inspector for accuracy and completion along with the applicant's building permit application.

7. In one instance, Cataldo, as Director of Inspections, reviewed one of the energy code audit reports that he had been paid privately to produce.

-Conclusions of Law-

-Section 17(a)-

8. As Leominster Director of Inspections, Cataldo was a municipal employee as defined in G.L. c. 268A, §1(g).

9. Section 17(a) prohibits a municipal employee from otherwise than as provided by law receiving compensation directly or indirectly related to a particular matter in which the town has a direct and substantial interest.

10. A building permit application is a particular matter.

11. Where the energy code audit reports had to be submitted to the Building Department and reviewed by a building inspector for completeness and accuracy before a building permit application was issued, the audits were in relation to a particular matter of direct and substantial interest to the town.

12. Cataldo was privately paid \$300 (6 audits at \$50 each) to perform the energy code audit reports later submitted with building permit applications to the Leominster Building Department.

13. Being compensated for these audits was not authorized by law.

14. Therefore, by being paid to produce energy code audit reports that were submitted and reviewed along with applicants' building permit applications, Cataldo received compensation in relation to a matter of direct and substantial interest to the town, contrary to §17(a).

-Section 19-

15. Section 19 prohibits a municipal employee from participating as such in a particular matter in which to his knowledge he or a business organization by which he is employed has a financial interest.

16. Where Cataldo, as Director of Inspections, reviewed as part of the building permit application an energy code audit report that he had privately prepared for a property, he participated in that particular matter.

17. Cataldo had a financial interest in that matter where he was paid \$50 to complete the energy code audit report and then, as Director of Inspections, he reviewed the energy code audit report for completion and accuracy.

18. Therefore, by reviewing the energy code audit report that he had been paid privately to produce, he participated in a particular matter in which to his knowledge he had a financial interest, contrary to §19.

-Section 23(b)(2)-

19. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his official position to secure for others an unwarranted privilege of substantial value which are not properly available to similarly situated individuals.

20. Advertising his private company at his Building Department office and distributing that advertisement to permit applicants were unwarranted privileges.

21. These privileges were of substantial value because they allowed Cataldo to generate private business which, in total, exceeded \$50.

22. These privileges are not otherwise properly available to similarly situated individuals.

23. Cataldo was only able to advertise his private business at the Building Department and distribute the above flier because he was Director of Inspections. Therefore, Cataldo used his official position to secure these unwarranted privileges.

24. Consequently, by using his official position to use public resources for private purpose, Cataldo knowingly used his official position to secure for himself unwarranted privileges of substantial value that were not properly available to similarly situated individuals, violating § 23(b)(2).

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Cataldo, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Cataldo:

- (1) that Cataldo pay to the Commission the sum of \$3,000.00 as a civil penalty for violating G.L. c. 268A, §§17(a), 19 and 23(b)(2);
- (2) that Cataldo pay to the Commission the sum of \$300.00 as a civil forfeiture for the money he improperly received for being paid to perform private energy code audit reports submitted to the Leominster Building Department; and
- (3) that Cataldo waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 21, 2007